

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD  
FOR PUERTO RICO**



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Executive Director

**BY ELECTRONIC MAIL**

April 9, 2020

Mr. Omar Marrero Díaz  
Executive Director  
Fiscal Agency & Financial Advisory Authority (AAFAF)

Dear Mr. Marrero Díaz:

On April 6, 2020, the Oversight Board sent you a letter requesting confirmation that the Government had canceled the agreements for the purchase of medical products, including rapid tests kits for COVID-19, in the approximate amount of \$40M with various companies, including 313 LLC and Apex General Contractors, and that the corresponding public funds had been reimbursed to the emergency fund. On April 8, 2020, the Government confirmed that the purchase order for Promedical COVID-19 test kits in the amount of \$38 million was canceled on April 2, 2020 and that the \$19 million deposit related thereto was fully refunded to the Government on April 6, 2020.

Furthermore, as was highlighted in our letter, the Government had not submitted the agreements to purchase the aforementioned rapid testing kits for the review of the Oversight Board as required under the FOMB's contract review policy pursuant to Section 204(b)(2) of PROMESA (the "Policy"). In addition, as our letter indicated, the agreements for the purchase of medical products had to be submitted to the Oversight Board pursuant to Executive Order No. 2020-24, which requires that any contract executed in accordance with said Executive Order must be submitted to the Oversight Board on the date of execution.

The Government of Puerto Rico stated in a press conference held on April 8, 2020, that it did not submit for the Oversight Board's review the purchase agreements in question because (i) they were made through "purchase orders" and (ii) "purchase orders" are not contracts. You should be aware that from a statutory perspective, an agreement for the purchase of goods or services, whether designated as a "purchase order" or any other term, is a contract for the purchase of goods under Puerto Rico law, regardless of its title. See, Art. 1334 of the Puerto Rico Civil Code, 31 L.P.R.A. sec. 3741. To date, the Government of Puerto Rico has not submitted to the Oversight Board any documents evincing the manner in which the purchase of the rapid tests kits was contracted.

Mr. Marrero Díaz

April 9, 2020

Page 2 of 2

In connection with the above, the Oversight Board would like to clarify that the Policy applies to any contract or agreement, such as government-issued purchase orders, which are enforceable contractual agreements under Puerto Rico law and administrative practice, that are proposed to be entered into by the Commonwealth (which includes the Executive, Legislative and Judicial branches of government) or any covered instrumentality, and otherwise meet the requirements of the Policy. Further, the Policy applies to all contracts in which the Commonwealth or any covered instrumentality is a counterparty, including those with the federal government, state governments, private parties, and nonprofit organizations.

Accordingly, based on the description that has been publicly disclosed regarding these agreements and the documentation submitted yesterday, prior approval by the Oversight Board would have been required under the Policy. Therefore, in accordance with the foregoing, please submit for the Oversight Board's review the purchase agreements at issue not later than April 13, 2020, regardless of whether they have been cancelled. If the Government fails to comply, the Oversight Board may take such actions as it considers necessary, including pursuant to Section 204(b)(5) of PROMESA.

Sincerely,



Natalie A. Jaresko